

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Replacement of Part 90 by Part 88 to Revise the)
Private Land Mobile Radio Services and Modify)
the Policies Governing Them)

PR Docket No. 92-235

and)

Examination of Exclusivity and Frequency)
Assignment Policies of the Private Land)
Mobile Radio Services)

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To: The Commission

REPLY
OF THE
AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute ("API"), pursuant to Section 1.429(d) of the Rules and Regulations of the Federal Communications Commission ("Commission"), by its attorneys, hereby respectfully submits this Reply to Comments filed by two entities in response to API's Petition for Reconsideration of the Second Report and Order ("Second R&O") adopted by the Commission in the above-styled matter.^{1/} This Reply addresses the consolidation of the Petroleum Radio Service, along with the other Industrial and Land Transportation Services, into the Industrial/Business ("I/B") Pool.

^{1/} Second Report and Order, 62 Fed. Reg. 18536 (April 17, 1997).

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I. DISCUSSION

A. Adoption of API's Proposal for Existing Petroleum Radio Service Systems Will Accomplish The Commission's Goals

1. In the Second R&O, the FCC consolidated the 20 Private Land Mobile Radio ("PLMR") Services into two pools: Public Safety and I/B. In the Petroleum, Power, and Railroad Radio Services, the Commission recognized that mobile radio communications are critical for responding to emergencies that could impact hundreds or even thousands of people. Order at ¶ 41. In addition, *numerous* Federal, state and local regulations -- not just a few regulations -- mandate the use of reliable communication facilities in these three industries as a way of ensuring the general public welfare, promoting industrial workplace safety, and safeguarding important environmental concerns.

2. As a way to accomplish these important public policy goals, the Commission decided that coordination responsibility for those frequencies previously allocated solely to each of these three services would be performed by the certified

frequency coordinator for each service.^{2/} This special coordination authority confers a significant benefit for Power and Railroad systems, because the Power and Railroad Radio Services enjoy numerous exclusive assignments in the VHF and UHF bands. See, ITA at ¶ 12.

3. The same cannot be said for the Petroleum Radio Service, which only has one UHF channel pair, two VHF channel pairs, and two low band channel pairs allocated on an exclusive basis. Moreover, these channel pairs are dedicated for oil spill containment and clean up operations on a primary basis. Thus, they are not utilized by Petroleum Radio Service eligibles in the same unimpeded fashion as most exclusive channels are used in the Power and Railroad Radio Services. Instead, licensees of these few exclusive Petroleum Radio Service assignments must be capable of curtailing use of the channels for normal day-to-day operations so that they can be employed for oil spill containment and clean up emergencies.

4. Clearly, the Commission's desire to protect existing Petroleum Radio Service systems was well-intentioned. However, the device which the Commission chose

^{2/} According to the FCC's new I/B Pool coordination rules:

[Entities] who apply for frequencies which are solely allocated to the Railroad, Power or Petroleum Radio Services must obtain coordination from the current certified frequency coordinator for the respective service. Second Order at ¶ 42.

to effectuate that goal -- coordination over exclusive channels only -- does not meet that goal.

5. Thus, API was compelled to propose a means to establish a limited service contour for existing Petroleum Radio Service systems within which the Petroleum Frequency Coordinating Committee would be permitted to review applications for new facilities. API believes that the strength of this proposal is evidenced by the fact that no third party filed an Opposition to this proposal. In fact, only three of the many parties that participated in this proceeding even addressed API's proposal in this phase of the matter: the Industrial Telecommunications Association ("ITA"); the Manufacturers Radio Frequency Advisory Committee ("MRFAC"); and Forest Industries Telecommunications ("FIT"). Both ITA and FIT strongly support the concept as it applies to existing Petroleum systems. ITA at ¶ 12; FIT at 6. For its part, MRFAC "does not oppose API's request" but, like FIT, MRFAC would like similar protection for its constituents. MRFAC at 3.

6. The lack of pointed opposition to API's proposal is attributable to the fact that it makes good sense as a method of implementing the Commission's goal to protect existing Petroleum Radio Service systems from harmful interference. As ITA noted in its Comments:

ITA agrees [with API], as a practical matter, that the special frequency coordination provisions adopted in the consolidation decision afford only limited relief to petroleum licensees. Clearly, these special coordination provision[s] confer a more meaningful benefit on licensees in the Railroad Radio Service and the Power Radio Service. ITA believes that API's proposed approach, using the concept of protected service contours to guard against harmful interference from non-petroleum licensees, represents a viable compromise.

ITA at ¶ 12.

7. API simply wishes to protect the reliability of ongoing operations in hazardous environments such as petroleum refineries, along pipeline rights-of-way, production fields, and at drilling sites, by enabling its frequency coordinator to effectuate the Commission's stated intention of protecting existing Petroleum Radio Service systems against harmful interference. The Commission is urged to adopt API's proposal.

B. The Commission Should Not Revisit Its Decision to Protect Petroleum, Power and Railroad Radio Services

8. Both MRFAC and FIT support API's proposal, but request the Commission extend to them the same protections which are established for the Petroleum, Power and Railroad Radio Services. API opposes their efforts to revisit this matter and believes that the Commission correctly determined that:

[T]here is broad support in the comments to protect operations in several radio services (Railroad, Power, and Petroleum) where radio is used as a

critical tool for responding to emergencies that could impact hundreds or even thousands of people.

Order at ¶ 41.

9. The Commission correctly concluded that these three classes of licensees engage in:

[D]ay-to-day operations provide[ing] little or no margin for error and in emergencies they can take on an almost quasi-public safety function. Any failure in their ability to communicate by radio could have severe consequences on the public welfare.

Order at ¶ 41. Although API does not doubt that those engaged in manufacturing and forestry activities have critical communications requirements, the Commission has already determined that they do not rise to the same level as those found in the petroleum, power and railroad industries.

10. API believes that the Commission correctly limited special coordination authority to the three classes of licensees engaged in petroleum, power and railroad operations. These three categories of licensee face the daily potential that loss of effective communications could “detrimentally affect the public welfare”. See, Order at ¶ 41.

C. API's Proposal is Not Premature

11. Although it supports API's proposal, MRFAC claims that the proposal may be premature because the Commission may adopt exclusivity in licensing during a later stage in the refarming proceeding. API strongly disagrees with MRFAC's suggestion that exclusivity rights conferred upon narrowband licensees would resolve API's concerns.

12. API's proposal would provide a safeguard only to existing licensees of Petroleum Radio Service systems. To the contrary, the Commission's exclusivity proposal to which MRFAC refers, if adopted, would apply only to those licensees that decide to convert to narrowband equipment. In exchange for converting to narrowband equipment, the Commission is considering whether or not to reward such proactive behavior with new licenses that are exclusive in whole or in part. Thus, the Commission's proposal would be germane only to narrowband licensees. API's proposal, on the other hand, would apply only to existing Petroleum Radio Service systems. MRFAC's suggestion is misplaced.

III. CONCLUSION

13. API strongly urges the Commission to establish the following protected service contours ("PSCs") for existing Petroleum Radio Service systems: (1) 39 dBu PSCs for existing UHF systems; (2) 37 dBu PSCs for existing VHF systems; and (3) 30 dBu PSCs for existing low band systems. Only by establishing guaranteed protections for these vital communications systems will the Commission attain its twin goals of ensuring public's safety and promoting efficient frequency assignments in the I/B pool.

14. In its Order, the Commission properly carved out three services for special coordination protection. These three services received broad support from third party commenters because they serve well-recognized public safety, worker safety, and environmental protection goals on a daily basis. The same may not be said for other licensee categories, such as forestry operations and general manufacturing, where some activities may be hazardous for individual workers, but many are not. As the Commission noted, the intrinsically hazardous nature of Petroleum Radio Service operations means that licensees in this service can "detrimentally affect the public welfare" if their communications systems fail.

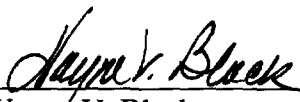
15. API objects to MRFAC's suggestion that the Commission's potential adoption of a plan to grant exclusivity to licensees that convert to narrowband technology

would redress API's concerns. To the contrary, API is interested in protecting existing Petroleum Radio Service systems from harmful interference, regardless of whether those systems convert to narrowband technology.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully requests the Commission to reconsider its service consolidation decision in this matter and take remedial action consistent with the request made herein.

Respectfully submitted,

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Dated: June 30, 1997

CERTIFICATE OF SERVICE

I, Patt Meyer, a secretary in the law firm of Keller and Heckman LLP do hereby certify that a copy of the foregoing REPLY OF THE AMERICAN PETROLEUM INSTITUTE has been served this 30th day of June, 1997 by mailing U.S. First-Class, postage prepaid, to the following:

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